

Office of the Secretary, Interior

§4.212

and implemented in an order by an administrative law judge are hereby ratified as valid and effective.

[51 FR 35220, Oct. 2, 1986]

COMMENCEMENT OF PROBATE PROCEEDINGS

§ 4.210 Commencement of probate.

The probate of a trust estate before an administrative law judge will commence when the probate specialist or BIA deciding official files with the administrative law judge all information shown in the records relative to the family of the deceased and his or her property. The information must include the complete probate package described in 25 CFR 15.202 and any other relevant information. The agency or BIA deciding official must promptly transmit to the administrative law judge any creditor's or other claims that are received after the case is transmitted to the administrative law judge, for a determination of their timeliness, validity, priority, and allowance under §§ 4.250 and 4.251.

[66 FR 32889, June 18, 2001]

§ 4.211 Notice.

(a) An administrative law judge may receive and hear proofs at a hearing to determine the heirs of a deceased Indian or probate his will only after he has caused notice of the time and place of the hearing to be posted at least 20 days in five or more conspicuous places in the vicinity of the designated place of hearing, and he may cause postings in such other places and reservations as he deems appropriate. A certificate showing the date and place of posting shall be signed by the person or official who performs the act.

(b) The administrative law judge shall serve or cause to be served a copy of the notice on each party in interest reported to the administrative law judge and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his last known address, in sufficient time in advance of the date of the hear-

ing to enable the addressee served to attend the hearing. The administrative law judge shall cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, shall be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice shall arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the administrative law judge's office unclaimed by the addressee.

(d) *Tribes to be charged with notice of death and probate.* When a record reveals that a Tribe has a statutory option to purchase interests of a decedent, such Tribe shall be notified of the pendency of a proceeding by the judge having probate jurisdiction in such proceeding, and the judge's certificate of mailing of notice of probate hearing or of a final decision in probate to the Tribe at its record address shall be conclusive evidence for all purposes that the Tribe had notice of decedent's death and notice of the pendency of the probate proceedings.

[36 FR 7186, Apr. 15, 1971, as amended at 39 FR 31636, Aug. 30, 1974]

§ 4.212 Contents of notice.

(a) In the notice of hearing, the administrative law judge shall specify that at the stated time and place he will take testimony to determine the heirs of the deceased person (naming him) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice shall name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice shall cite this subpart as the authority and jurisdiction for holding the hearing, and